



Administrative Tribunal

Distr.: Limited
30 September 2003
English
Original: French

ADMINISTRATIVE TRIBUNAL

Judgement No. 1129

Case No. 1226: BURBIDGE

Against: The Secretary-General of the
United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, Vice-President, presiding; Mr. Spyridon Flogaitis; Ms. Brigitte Stern;

Whereas at the request of Robert Burbidge, staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 30 June 2001 and subsequently to 31 October 2001 the time limit for the filing of an application with the Tribunal;

Whereas on 31 October 2001 the Applicant filed an application containing pleas which read, in part, as follows:

"II. PLEAS

...

8. On the merits, the Applicant respectfully requests the Tribunal *to find*:

"(a) that the Applicant meets the criteria for the granting of the long-service step set forth in ST/IC/87/46 [of 27 August 1987] ...

...

9. ... *to order* as remedy:

(a) that the Applicant be granted a long-service step retroactive to 1 January 1997;

or, failing that:

(b) that the Applicant be granted compensation as follows:

- \$11,477 (amount he would earn from 1997 to date of retirement had he been granted the long-service step);
- \$6,250 (amount of difference the long-service step would make in his pension ...)."

Whereas, at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 5 March 2002 and twice thereafter until 31 August 2002;

Whereas the Respondent filed his Answer on 31 July 2002;

Whereas the Applicant submitted his Written Observations on 10 February 2003;

Whereas the facts in the case are as follows:

After working for a number of years - from October 1971 to December 1983 - as an English language teacher at Headquarters under a series of special service agreements, the Applicant became a staff member effective 1 January 1984 on a fixed-term appointment for two years as an English language teacher at the T/IV level with the Office of Personnel Services ~~(now~~ the Office of Human Resources Management (OHRM)). On 1 March 1990 he received a permanent appointment. From 1 November 1991 to 11 December 1992 the Applicant received a special post allowance at the P-2 level. At the time of the events that gave rise to the present application, the Applicant was a language teacher at the LT1 level with OHRM.

On 21 March 1997, the Applicant wrote to the Senior Administrative Officer of the Department of Management on behalf of himself and six other language teachers, requesting that they should be placed at the long-service step of the salary scale. He indicated that the staff members concerned had all been serving the Organization for more than 20 years and therefore met the criteria for a long-service step increase. The Applicant reiterated this request in a memorandum dated 16 June 1997 addressed to Ms. Legaspi, Administrative Officer of the Department of Management.

On 23 June 1997 Ms. Legaspi informed OHRM that a review of the files of the seven staff members confirmed that they had completed five years of service at the top step, but, taking into account their official entry-on-duty (EOD) date of 1

January 1984, the long-service step would not be due until 1 January 2004. However, given the special circumstances involved in their appointments, she asked OHRM to consider the language teachers' request to obtain their long-service step increase effective 1 January 1997. On 28 January 1997, OHRM replied that it was not in a position to accede to the Applicant's request, because, although the special services agreements had given the language teachers some entitlements, it had nevertheless prevented them from being considered as regular staff members. The Applicant was so informed on 10 September 1997.

On 10 November 1997 the Applicant asked OHRM to reconsider its position. He attached a memorandum dated 13 April 1989 in which the Deputy Chief of the Compensation and Classification Service, OHRM, stated, among other things:

"Implicit in the question of the delay in carrying out the salary survey for the language teachers is the issue of de facto recognition of five teachers' service with the Organization prior to their acquiring the status of staff members ... We would observe that the issue of seniority of these five teachers had already been taken in consideration in 1984 when the language teachers were placed on the provisional scale ... We would point out that the Organization has recognized long service for all locally-recruited staff members, including the language teachers, by the inclusion of a long-service step in the salary scale (step XI)."

On 5 December 1997, OHRM submitted the question to the Chief of the Rules and Regulations Unit for a ruling. On 29 December 1997, the Chief of the Unit replied that "the 20-year period of service for entitlement to the long-service step should be calculated on the basis of the EOD date" in accordance with General Assembly resolution 38/234 of 20 December 1983 and ST/AI/316 of 6 March 1984. On the same date, OHRM informed Ms. Legaspi that the Rules and Regulations Unit had confirmed that the service of the language teachers prior to 1 January 1984 would not be taken into account in determining their years of service for purposes of the long-service step. The Applicant was so informed on 30 December 1997.

On 20 April 1998 the Applicant requested administrative review of the decision not to grant him the long-service step.

On 16 September 1998 he filed an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 8 November 2000. Its conclusions and recommendations read, in part, as follows:

"Conclusions and recommendation

24. In the light of the foregoing, the Panel *unanimously agreed* that, though not considered as a staff member prior to 1984, the Appellant nevertheless provided the recognized service to the Organization. It also *unanimously agreed* that in view of the history of the language teachers leading to the granting of the status of a staff member to the Appellant and other language teachers and the purpose of a long-service step the Administration as a good employer should take in consideration the years of service rendered by the Appellant before 1984 and view them exceptionally as falling within the meaning of 'service within the United Nations common system'.

25. The Panel thus *unanimously recommends* that the Appellant be granted a long-service step retroactive to 1997, if it can be established that he had indeed completed five years at the top regular step of his current grade in 1997.

26. The Panel wishes to emphasize that it makes the above recommendation out of its sense of equity and fairness and its appreciation of the years of devoted service provided by the Appellant. The recommendation is made on the merits of this individual case and should not be viewed as creating a precedent."

On 16 April 2001, the Under-Secretary-General for Management transmitted a copy of the report of the JAB to the Applicant and advised him as follows:

"While appreciating the sentiments behind the position taken by the Board, the Secretary-General is not in agreement with that position. The long-service step is an entitlement that is based on the duration of the staff member's service *as a staff member* and, in your case, it began accruing from the date of your entry on duty as a staff member, that is, on 1 January 1984. Your service prior to that date could only be taken into account, as indeed it was, for the purpose of determining the appropriate steps on a salary scale, as is routinely done at the time of recruitment. For this reason, the Secretary-General cannot accept the recommendation of the Board ..."

On 31 October 2001, the Applicant filed the above-mentioned Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The JAB found that the Applicant met the requirements as per the intention of the staff rule and ruled unanimously in his favour.

2. Prior to 1984, the Applicant was a *de facto* staff member. Moreover, the General Assembly recognized the Applicant's prior service at the time his status was converted. General Assembly resolution 38/234 and administrative instruction ST/AI/316 regularized his status by changing it to that of staff member, which amounted to the recognition and legitimization of a function that had already existed for a number of years.

3. The Administration created a clear expectation that the Applicant would receive a long-service step.

Whereas the Respondent's principal contentions are:

1. The Applicant was not a staff member prior to 1 January 1984 and the grant of staff member status in 1984 had no retroactive effect.

2. The Applicant's contractual status prior to 1984 was not "service within the United Nations common system". The Applicant is not entitled to the long-service step awarded under ST/IC/87/46 to staff members who have served within the Organization for more than 20 years, the last five of which were at the top step in level.

3. The award of a long-service step as requested by the Applicant would constitute an ex gratia payment since no legal liability has attached. Moreover, there is no "moral obligation" for the Organization to make such an award. Accordingly, such an award is not warranted.

The Tribunal, having deliberated from 3 to 25 July 2003, now pronounces the following judgement:

I. The Applicant began to work for the United Nations as an English language teacher in 1971. From 1971 to 1983 he was employed under special service agreements before becoming a staff member of the United Nations, first on a fixed-term contract for two years and subsequently, effective 1 March 1990, on a permanent contract. Effective 1977, his status had become akin to that of a staff member. In 1997 the Applicant asked the Administration to place him at the long-service step introduced by information circular ST/IC/87/46 of 27 August 1987, since he met the established criteria:

"The following criteria ... will apply for the granting of the long-service step:

"(a) The staff member should have had at least 20 years of service within the United Nations common system and 5 years of service at the top regular step of his/her current grade;

"(b) The staff member's service has been entirely satisfactory."

The Administration refused to place him at the long-service step, arguing that he did not have 20 years of service as a staff member.

II. The first point that the Tribunal should make clear is that there is no dispute that when a staff member meets the criteria set forth in the circular, he/she is entitled to be placed at the long-service step. That conclusion derives from the wording of the circular itself, which makes the granting of the long-service step subject only to the stated criteria and allows the Administration no room for discretion, as is generally the case for promotions. In other words, it is sufficient for the criteria to be met in order for the staff member to be entitled to be placed at the long-service step.

III. This was the reasoning the Tribunal followed in another case concerning the granting of the long-service step, in which it limited itself to verifying that the three criteria set out in the relevant circular, IC/Geneva/3383, were met, and held that, since they were, the Applicant was entitled to be placed at the long-service step retroactively:

"The Tribunal must ... consider the nature of the right claimed and the conditions attached to it. The circular [concerning the long-service step] ... stipulates that the long-service step is subject to the following criteria:

"(a) Twenty years of service within the common system;

"(b) Five years of service at the top of the grade; and

"(c) Entirely satisfactory service."

"The Applicant has satisfied the condition set out in (a), of twenty years of service. ... the Tribunal finds that the Applicant has met the condition set forth in (c). ... the condition set out in (b) has also been met. The Applicant is **therefore** entitled to the long-service step. Accordingly, the Tribunal considers that the Applicant's claim for a long-service step should be granted, with effect from 3 May 1990" (Judgement No. 724, *Fussimanya-Reyna*, 21 November 1995, paras. V and VI, emphasis added by the Tribunal).

In other words, it is necessary and sufficient for the three criteria to be met to give rise to an entitlement to be placed at the long-service step. In the above-mentioned case, the Tribunal held that the Applicant had retroactive entitlement, from the very day after she had requested it.

IV. The Tribunal will proceed in the same manner in the present case. In order to determine whether the Applicant's entitlement to be placed at the long-service step has been violated by the Administration, it will consider whether the criteria necessary for the granting of the long-service step were or were not met.

V. As it happens, the problem centres on the criterion concerning 20 years of service. That the Applicant has always been given good evaluations has not been

disputed by the Administration and should be considered established. The second criterion is therefore met. Paragraph 2 (a) of information circular ST/IC/87/46 of 27 August 1987 actually sets out two conditions: 20 years of service and five years of service at the top step of the grade. There is no doubt that the second of these two conditions has been met. It is established beyond dispute, and in any case is not disputed by the Respondent, that by 1 January 1997 the Applicant had been at the top step of his grade for five years. What is yet to be determined is whether the remaining condition that would entitle the Applicant to be placed at the long-service step has been fulfilled. It is on this point that the contentions of the parties differ. The Applicant considers that in 1997 he had been in the service of the Organization for 26 years, 20 of those as a de facto staff member. The Respondent considers that "the Applicant was not a staff member prior to 1 January 1984" and that he is not entitled to the long-service step because "the long-service step is an entitlement that is based on the duration of the staff member's service **as a staff member**" (letter of 16 April 2001 from the Under-Secretary-General for Management addressed to the Applicant; emphasis by the Administration).

VI. The Tribunal will now interpret the relevant documents, in particular the circular that sets the criterion of 20 years of service within the United Nations system, but also circular ST/AI/316 of 6 March 1984 granting the status of staff members to full-time language teachers.

VII. The intent and purpose of circular ST/IC/87/46 of 27 August 1987 creating the long-service step was to recompense deserving staff members who had served the Organization for more than 20 years, five of which were at the highest step of their grade. The additional step was made retroactive to 1 January 1985.

VIII. The question the Tribunal must answer, therefore, is what is meant by 20 years of service with the United Nations and, consequently, from what date the Applicant's work should be considered service with the United Nations. The answer depends on what is meant by "service within the United Nations common system". The circular does not define what is meant by "service", as even the Respondent admits, when he writes that circular ST/IC/87/46 "contains no definition of 'service within the United Nations common system'".

IX. In order to make the matter perfectly clear, it should be specified, as the Applicant does, that "the Applicant is not asking the Tribunal to recognize, for purposes of this appeal, the period of service from October 1971 to 1976". He is

only asking for recognition of his services from 1977 on, when he had a status very close to that of a staff member. According to the Applicant, "from 1977 to 1983 his service equates the exact manner, level, equity and competence he offers today. The only difference between 1977 to 1983 and 1984 to date was in the manner that service was recognized and compensated". The Respondent, however, categorically refuses to take into account any services other than those performed as a staff member, in other words, services from 1984 onwards.

X. The Tribunal will begin by examining the text of circular ST/IC/87/46, which created a long-service step "for staff in the General Service and related categories". In the Tribunal's opinion, it is clear from the terms of the circular that the long-service step should also be applicable to those in a situation comparable to that of an employee in the General Service category.

XI. Second, the Tribunal considers that the Applicant was in just such a situation akin to that of employees in the General Service category. As it happens, the Applicant, like the other language teachers, was granted progressively, beginning in 1973 but especially from 1977 on, a range of entitlements which were staff member entitlements. This point was recognized by the Joint Appeals Board in the following terms:

"The Appellant's case was unique, in the sense that, while working as a non-staff member before 1984, the Appellant acquired **a range of benefits and entitlements normally reserved for a staff member** ..." (emphasis added by the Tribunal).

More specifically, the Applicant enjoyed the medical benefits of a staff member, as well as paid vacation leave like that of a staff member. Moreover, he was eligible for compensation in the event of service-incurred death. Furthermore, the Applicant states, and the point is confirmed by examination of his file, that "similar to staff members he was entitled to one month's written notice and termination indemnity and according to Annex I of the Agreement, he was entitled to two days' sick leave per month". These various elements, which put language professors on close to the same footing as United Nations staff members, were also commented upon by the JAB:

"... the Appellant and other language teachers became eligible for participation in the United Nations medical insurance schemes and compensation for **service-incurred death, injury or illness, sick leaves and payment for vacations and official holidays, entitlements usually reserved only for staff members**" (emphasis added by the JAB).

The language teachers' special situation was spelled out from 1977 on in a "Language Teacher Employment Agreement", concluded annually, which, in the Applicant's view, gave him "benefits similar to those extended to regular staff members".

XII. The Tribunal must examine the Administration's argument that the decisions in 1984 on integrating language teachers into the category of staff members of the Organization cannot be considered as retroactive texts conferring the status of staff members on language teachers from the date of their recruitment to 1 January 1984: "... the grant of staff member status in 1984 had no retroactive effect". The Tribunal agrees with that analysis. But it is one thing to make a text retroactive and another to take certain past facts into consideration in implementing a text prospectively. It so happens that, in implementing the circular granting the status of United Nations staff members to language teachers, **the Organization took into consideration their service, as service**, in order to confer certain rights on them. The Applicant is not asking any more than that. He is not asking to be considered to have been a staff member since his recruitment and in consequence to be entitled, retroactively, to all the rights of staff members. He is simply asking that, for purposes of his placement on the salary scale in 1997, his years of service should be taken into account, as they were in 1984.

XIII. Moreover, the Tribunal should point out that the Administration itself thought of the work performed by the Applicant and by the other language teachers before they became staff members as "service" within the Organization. That was the position of the Administration before they became staff members, as well as when and even after they became staff members.

XIV. Before the language teachers' status was converted to that of United Nations staff members, it was generally acknowledged that they were performing a service within the Organization, and it was precisely because those services had not been recognized as they should have been that the process of converting their status was undertaken.

XV. The Tribunal has examined a Fifth Committee document concerning the status of language teachers in which the Secretary-General's proposal to grant them the status of staff members was discussed (A/C.5/37/63, dated 1 December 1982). The objectives of the conversion of status were described as follows:

"The objectives of the proposal were twofold. The first was to improve the efficiency of the language training programme ... The second objective was to provide language teachers who at that time had served the Organization an average of nearly nine years under uncertain conditions of service with a regularized status ..."

The notion that there was something irregular about the situation as it stood can be found in a number of places in the document, for example, where it says: "The method proposed for regularizing the contractual status of language teachers consisted of ..."

XVI. When the language teachers became staff members, it was also considered that they had completed a number of years of service at the United Nations prior to their integration as staff members. That aspect of the matter did not escape the notice of the JAB:

"The issue as to whether the work of the language teachers before 1 January 1984 should be considered as service came up in 1984 when the Administration was determining where to place them on a provisional salary scale. It was then decided that the years of work by the language teachers including the Appellant prior to 1984 should be taken into consideration. 'A scheme was therefore devised whereby those teachers having the most **service with the United Nations** (i.e. 10 years or more) were placed at step IV of the provisional scale. Those with 7-9 years of **service** were placed at step III, and so on'" (emphasis added by the JAB).

When making the Applicant a staff member, the Organization did in fact take into consideration his years of service, converting his position of de facto staff member to the status of de jure staff member. The JAB took note of that consideration:

"... his years of work as a non-staff member before 1984 [were] subsequently recognized as 'service' for the purpose of computation of his seniority step in the salary scale.

... The Appellant was placed at step IV of the provisional scale."

The Tribunal thus finds that the Administration did take into consideration the years of service prior to 1984 in determining the seniority step of each teacher, even though, because of the evolving situation around 1977, the years were not strictly calculated.

XVII. Furthermore, the Tribunal notes certain indications that the Administration continued to consider the work performed prior to 1984 as service within the United Nations.

XVIII. The parties differ in their interpretation of a statement contained in the memorandum of 13 April 1989 from the Deputy Chief of the Compensation and Classification Service, who was responding to the concerns of the language teachers about their salary scale. They had been placed on a provisional salary scale in 1984 when they became staff members, and the new revised scale was not put into effect until 1 December 1989. Some of the teachers complained about the delay in drawing up the revised scale and thought that they should be promoted, since they had remained at step V for three years. The Administration rejected the request, explaining that their years of service had already been taken into consideration and, in the Applicant's interpretation, would also be taken into consideration in calculating the seniority entitling them to the long-service step, which did not exist in the provisional scale but would be incorporated in the revised scale. It will be useful to cite the passage on which interpretation differs:

"We would observe that the issue of seniority of these five teachers had already been taken into consideration in 1984 when the language teachers were placed on the provisional scale. It should be noted that all provisional language teacher scales consisted of five steps. A scheme was therefore devised whereby those teachers having the most service with the United Nations (i.e. 10 years or more) were placed at step IV of the provisional scale. Those with between 7-9 years of service were placed at step III, and so on. We would point out that the Organization has recognized long service for all locally recruited staff members, including the language teachers, by the inclusion of a long-service step in the salary scale (step XI)."

The Applicant considers that this statement by the Administration "created a clear expectation that the Applicant would receive a long-service step", and goes on to say:

"[After recognizing] the Applicant's long-service step **in the context of the prior years of service** and seniority, it would seem to be disingenuous of the Administration to then turn around and find that those same prior years of service and seniority would not count towards the long-service step entitlement" (emphasis added by the Tribunal).

He also states that:

"Any other interpretation of his words would be tautological. If he only meant that the teachers would be eligible for a long-service step once they became staff members (and fulfilled the requisite conditions) his statement would be the equivalent to stating that locally recruited staff members will be entitled to a long-service step in the same way as other locally recruited staff members."

The Respondent interprets the statement quite differently to mean that, like others, teachers, being staff members, counting from the time that they become staff members, will have the prospect of benefiting from the long-service step.

XIX. In the Tribunal's view, the Administration's interpretation is untenable, because it is contrary to the sense that must have been given to this statement in 1989 and would lead to an absurd and inequitable outcome. If the Administration, in refusing the language teachers a promotion, told them that in recompense they would be entitled to a long-service step, that would have amounted to telling them that when they completed 30 years of service with the United Nations (in the case of those placed at step IV because they had 10 or more years of service prior to 1984) or 27 to 29 years of service with the United Nations (in the case of those placed at step III because they had from seven to nine years of service with the United Nations prior to 1984) they would be eligible for the long-service step. The absurdity of such a statement argues against the Respondent's interpretation.

Moreover, the Administration's interpretation would lead to the absurd, inequitable result, contrary to the Administration's aim in changing the status of language teachers, that when the Applicant retired in 2001 "[would] have been working full-time in the common system for more than 29 years and [would] have been blocked at the top of his grade for nine years without ever benefiting from the long-service step".

XX. Lastly, the Tribunal notes that, when the Applicant submitted his request for placement at the long-service step, the Administrative Officer of the Department of Management appeared to consider the request admissible, in view of the terms of her letter of 23 June 1997 addressed to the Officer-in-Charge, Cluster IV, Operational Services Division, OHRM:

"However, **if we were** to take into account their official EOD date of 1 January 1985, the long-service step **would not be** due until 1 January 2004.

...

We would appreciate OHRM's consideration of the Language Teachers' request to obtain their long-service [step] effective 1 January 1997, given the **special circumstances** involving their appointments" (emphasis added by the Tribunal).

The use of the conditional to state the position now defended by the Respondent and the mention of special circumstances show that the writer of the

letter was not contemplating a restrictive reading of the circular granting the long-service step.

XXI. The Administration's position has now changed, and suddenly it is unwilling to consider any but the years of service as a staff member, wiping out with the stroke of a pen the years of service prior to 1984. To justify its position, the Respondent elaborates a number of arguments that the Tribunal will now examine. Two lines of argument in particular are advanced. The first is that "service" should not be confused with "services". The second is that, even if the Applicant's work could be considered service with the United Nations, it is too limited and restricted to be taken into consideration in granting the long-service step. In that connection, the Respondent invokes the jurisprudence of the Tribunal, which it claims supports its position.

XXII. The Tribunal will begin by examining the first line of argument, in which the Administration seeks to draw a distinction between "service" within the United Nations system and "services" provided to the Organization, in the following terms:

"The Respondent asserts that providing services to the United Nations from outside of the United Nations common system is very different from being in 'service within the United Nations common system'. Many services are provided to the Organization, whether by its full-time staff members, by independent contractors or consultants, or by outside vendors and service people."

The Tribunal agrees with the distinctions proposed, but considers that no consequences can be drawn from them in relation to the specific situation of the language teachers. While the distinction is certainly valid, it does not lead to the conclusion, in the Tribunal's view, that language teachers are to be considered providers of occasional services.

XXIII. The Tribunal now comes to the Respondent's remarks in which he describes the Applicant as simply an occasional employee. The Respondent's statement that prior to 1984 "the Applicant provided occasional service for limited periods on an hourly basis" is in contradiction to the Administration's analysis in 1979, as evidenced by a memorandum dated 28 August 1979 concerning the contract status of the language teachers, in which their situation is described as follows:

"... By 1972, a disparity was clearly apparent between their actual status as 'part-time' teachers, most of whom carried nearly full-time loads, and their de jure status as hourly employees receiving no benefits beyond their hourly pay. Subsequently, ... a series of improvements were introduced ...

As of August 1979, ...

The de facto situation is that the 24 teachers holding Language Teacher Employment Agreements teach as many hours per week and as many months per year as full-time teachers in local schools and universities."

This point is also brought out in the nineteenth report on the proposed programme budget for the biennium 1982-1983 submitted by the Advisory Committee on Administrative and Budgetary Questions (ACABQ) to the General Assembly (A/36/7/Add.18), in which the Secretary-General's position is described:

"... the Secretary-General ... states that the granting of staff-member status to the full-time teachers would improve the over-all efficiency of the language training programme. In this connexion, the Advisory Committee notes that the Secretary-General regards as 'full-time' the teachers who provide an average of 14.5 to 15 hours of instruction a week."

The same analysis was reiterated in the twenty-fifth report on the programme budget for the biennium 1982-1983 submitted to the General Assembly by the ACABQ (A/37/7/Add.24), in which the issue of granting staff-member status to language teachers continued to be discussed, in the following terms:

"The Committee recognizes that a legitimate basic problem exists - that of providing job security and other employment benefits for full-time teachers, several of whom **have devoted many years of service** to the United Nations" (emphasis added by the Tribunal).

It is also pertinent to look at what ACABQ said in its document A/36/7/Add.18, to the effect that it "agree[d] that individuals who **serve[d]** the United Nations on a full-time basis over a period of years should not be regarded as casual employees" (emphasis added by the Tribunal).

In the view of the Tribunal, the assertions that the Applicant merely worked for the Organization on an occasional basis are contradicted by the Applicant's file.

In any event, the Applicant cannot be considered an occasional employee from 1977 on. The Tribunal notes that up to 1976 his contracts bore the title of "Teacher Agreement for Occasional Employment" but from the start of the academic year 1977/78 they were entitled "Language Teacher Employment Agreement". The terms used in the contracts also changed. Prior to 1977, they specify that the Applicant "shall serve as an occasional employee as English language teacher"; starting in 1977 they state that the Applicant "shall serve as English language teacher". Moreover, the Tribunal notes that the Respondent's assertions are also in

contradiction with the position he took in 1984 and would make it hard to understand why the Administration counted limited and occasional services as years of service, to the benefit of the language teachers.

XXIV. Lastly, the Tribunal turns its attention to the precedent invoked by the Respondent in support of his refusal to count years of service prior to 1984 towards the long-service step. The Respondent cites the *Fayad* case (Judgement No. 176 (1973)), in which the Tribunal rejected the argument that a period of employment completed by the Applicant under a contract signed with the United Nations should be validated for participation in the United Nations pension fund, on the grounds that the Applicant was not a full-time staff member of the Organization during the relevant period. However, the Tribunal does not consider the precedent relevant to the present case, because the factual circumstances were completely different. In the *Fayad* case, it was "clear from the provisions of the judiciary contract ... that the Applicant would perform his functions on behalf of the Republic of the Congo and subject to the latter's authority ...", and that "the clauses of the contract governing annual leave, sick leave and the settlement of disputes differ[ed] from the provisions of the Staff Rules" (ibid., para. VII). The two cases are not comparable either in terms of the daily reality of the functions performed or in the legal aspects.

XXV. In conclusion, it is the Tribunal's view that it would be at least illogical, if not arbitrary, to characterize the Applicant's work as a teacher as service within the Organization over the course of the years and to cease to consider it as service in 1997, just when the Applicant asked to be placed at the long-service step. Not to grant the Applicant the long-service step would be contrary to the purpose and intent of introducing this supplementary step, namely, to give recognition to those who have devoted their lives to the service of the Organization. The decision not to grant the Applicant a long-service step violated the Applicant's rights.

XXVI. For the foregoing reasons, the Tribunal:

1. Decides that the Administration should restore the situation that would have existed if the Administration had granted the Applicant the long-service step effective 1 January 1997 by restoring to him the salary he should have received at that step from that date to his retirement and by calculating his pension on the basis of the salary at the long-service step.
2. Rejects all other pleas.

(Signatures)

Mayer GABAY
Vice-President, Presiding

Spyridon FLOGAITIS
Member

Brigitte STERN
Member

Geneva, 25 July 2003

Maritza STRUYVENBERG
Executive Secretary